

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1024 of 2023**

**In
CRIMINAL APPEAL (SJ) No.1451 of 2023**

Arising Out of PS. Case No.-306 Year-2017 Thana- NATHNAGAR District- Bhagalpur

1. Santosh Yadav Son of Late Videshi Yadav @ Bideshi Yadav Resident of Village- Sahebganj, (Nilkothi), Ps- Vishwavidyalaya, Dist- Bhagalpur
2. Raju Kumar Son of Late Videshi Yadav @ Bideshi Yadav Resident of Village- Sahebganj, (Nikothi), Ps- Vishwavidyalaya, Dist- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 631 of 2023

Arising Out of PS. Case No.-306 Year-2017 Thana- NATHNAGAR District- Bhagalpur

Rajeev Kumar Son of Late Videshi Yadav @ Bideshi Yadav Resident of Mohalla - Sahebganj (Nilkothi), P.S.- Vishwavidyalaya, District - Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1024 of 2023)

For the Appellant/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Manoj Kumar Jha, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 631 of 2023)

For the Appellant/s : Mr. Sanjiv Kumar, Advocate
Mr. Manoj Kumar Jha, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**



Date : 24-09-2024

Both the appeals have been heard together and are being disposed of by this common judgment.

2. We have heard Shri Rajendra Narian, learned Senior Advocate for appellants/Santosh Yadav and Raju Kumar in Cr. App (DB) No. 1024 of 2023 and Mr. Sanjeev Kumar, learned Advocate for appellant/Rajeev Kumar in Cr. App (DB) No. 631 of 2023.

3. The State in both the appeals have been represented by Mr. Abhimanyu Sharma, learned Additional Public Prosecutor.

4. The three appellants have been convicted under Sections 302/24 of the IPC, but very curiously and wrongly have been sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 10,000/- for the offence under Section 302/34 of the Indian Penal Code by the learned Additional District & Sessions Judge-V, Bhagalpur in Sessions Trial No. 973 of 2017/Trial No. 213 of 2022 corresponding to Nathnagar (Lalmatia) P.S. Case No. 306 of 2017 *vide* judgment of



conviction and order of sentence dated 23.01.2023/27.01.2023.

5. Precisely for this reason, while admitting these two appeals, notices were issued to the appellants for enhancement of the sentence. This Court had also directed for preparation of the paper book so that the appeal could be heard expeditiously.

6. One Abhishek Kumar is said to have been murdered at the hands of the appellants and one Dharmendra Yadav @ Dharma Chor. The fardbeyan was lodged by Indrajeet Kumar (P.W. 3), a brother of the deceased, which was recorded by A.S.I. Sandeep Kumar Jha of Barari Police Station (not examined at the Trial), at JLMNCH on 02.07.2017 at about 10:00 A.M. It was alleged by him that about two days ago, he and his brother (deceased) were asked to pay up Rs. 50,000/- and were also threatened of dire consequences by co-convict Dharmendra Yadav if the money was not paid. On 02.07.2017 at about 8 O'clock in the morning, when he



and his brother (deceased) were going towards Sahebganj crossing, co-convict/Dharmendra Yadav and the appellants, who are brothers amongst themselves caught both the brothers. Appellant/Santosh and Raju had caught Indrajeet (P.W. 3), whereas Abhishek (deceased) was caught by appellant/Rajeev. Thereafter, it is alleged that in his presence, Dharmendra Kumar Yadav took out a country made pistol from his pocket and fired at his brother (deceased) in his neck. Finding him dead, the appellants and Dharmendra did not consider it necessary to harm Indrajeet in any manner. Thereafter, all the four including the three appellants ran away. On hulla raised by P.W. 3 as also on the sound of firing, many persons arrived. With the help of persons who had assembled at the place of occurrence, his brother was taken to hospital, where during the course of treatment, he died at about 08:42 A.M.

7. On the basis of the aforementioned fardbeyan statement of P.W. 3, Nath Nagar (Lalmatiya) P.S. Case No. 306 of 2017 dated 02.07.2017 was registered for



investigation for offences under Sections 302, 386 and 34 of the Indian Penal Code and Section 27 of the Arms Act against the appellants and Dharmendra.

8. The Police after investigation submitted chargesheet against all the four brothers including the appellants and they were all sent up for Trial.

9. The Trial Court after having examined ten witnesses on behalf of the prosecution and four on behalf of the defence, convicted and sentenced the appellants as aforesaid.

10. It is really surprising as to how after convicting the appellants, they have been sentenced to undergo rigorous imprisonment for 10 years only. It could be a slip of pen or a mistake. On this score alone, we could have set aside the judgment and order of conviction and sentence and remitted the matter to the Trial Court to write out a fresh sentence. However, that procedure would have taken long and therefore after issuance of notice to the appellants for enhancement of the sentence in case



they are found guilty under Section 302 of the Indian Penal Code, directions were issued to the Registry for placing the appeals for final hearing after preparation of the paper book.

11. It is one of the most improperly contested cases, leaving many loopholes and crevices in the prosecution version.

12. Going by the FIR, P.W. 3 was the only eye-witness to the occurrence. His statement at the Trial reflects that an attempt has been made to improve upon his initial version. Both he and the deceased were stopped by the appellants and the deceased was shot at by Dharmendra Yadav @ Dharma Chor. He has further stated before the Trial Court that Dharmendra also threatened P.W. 3, that if any attempt is made to save the life of the deceased, he too would be killed. Hearing the sound of firing, the parents and sisters of P.W. 3 also arrived. Seeing them come to the P.O., the appellants ran away. With the help of one of the villagers who offered to give



his motorcycle, his brother who was still struggling for life was taken to hospital where during the course of treatment he died.

13. This assertion namely of the parents and sisters of P.W. 3 having come to the P.O. on hearing the sound of firing is an improvement from his initial version in the fardbeyan.

14. His deposition before the Trial Court becomes suspect for more than one reason.

15. It does not appear to be probable that a brother would be allowed to go unscathed even when he had been a witness to the cold-blooded murder of another brother. There was no supervening circumstance for the appellants to have spared P.W. 3, for him to report the matter to the police.

16. The second aspect of the matter which has amazed us is that if co-convict/Dharmendra had threatened P.W. 3 and the deceased of dire consequences in case they



did not pay up Rs. 50,000/- as ransom money or protection money, the matter ought to have been reported.

17. What was this protection money for?

18. Was it because the deceased and P.W. 3 along with their father were running a provision shop in the locality?

19. It does not appear to be so.

20. Was there an old enmity?

21. There is nothing on record to indicate any reason for which the enmity could have been avenged by killing one of the brothers.

22. On the contrary, it has come during the Trial that all the appellants are residents of the same locality and their house is situated at a distance of about 60-70 meters. Some of the witnesses have given a ballpark figure of 200 meters.

23. What is evident from the deposition of the witnesses is that the appellants are the neighbours of the deceased and except for a demand of Rs. 50,000/- two



days ago, there was no reason for the appellants to have undertaken such a step of killing the deceased. When confronted with specific question, P.W. 3 has admitted that except for his own family members, no independent person has been brought to the witness-stand to support the prosecution case.

24. In this context, we have also taken notice of the fact that the Police Officer, who scribed the fardbeyan *viz.*, Sandeep Kumar Jha has neither been examined nor is there any explanation on record for his non-examination.

25. The deceased, according to P.W. 3, was taken to hospital by a person of the locality, who acted as a samaritan. It was all the more necessary for him to be examined for unraveling the truth. We say so also for the reason that the deceased, despite receiving such injury in his neck was still struggling for life and was taken to hospital where treatment was afforded to him.

26. This story does not appear to be correct or at least this version has not been proved at all.



27. It would be profitable in this context to refer to the post-mortem report as also the deposition of Dr. Rajiv Ranjan (P.W. 4), who conducted the post-mortem on the deceased.

28. The post-mortem examination was conducted on 02.07.2017 at about 12.50 P.M. There was one minor/simple injury on the forehead of the deceased just above the eye-brow. The fatal injury was the gunshot/wound of entry with inverted margin and tatooing around the wound of the size of 1"x ½" in the middle and front of neck. It appeared during the post-mortem examination that the bullet had pierced the soft tissues, the trachea, the oesophagus and the surrounding blood vessels. Because of the movement of the projectile, the 5th and 6th cervical vertebra were also fractured. The bullet got stuck-up in the nape of the neck. The cause of death obviously was held to be hemorrhage and shock because of the aforementioned injuries. The bullet after being taken out



from the dead body neither sealed or sent for any ballistic/forensic examination.

29. That the deceased died a homicidal death is beyond dispute. That the cause of death was gun-shot is again not disputed.

30. What has been canvassed by the learned advocates for the appellants is that the deceased was not killed by Dharmendra Yadav or the appellants and that the version of P.W. 3 is not at all reliable.

31. In order to support such contention, Mr. Narain, learned Senior Advocate for two of the appellants has submitted that had Ruchi Kumari, Puja Kumari, Chetan Kumar, Madhuri Devi, Sumit Kumar and Arun Kumar Sah (P.Ws. 1,2,5,6,8 and 9) come to the P.O., either at the time of occurrence or immediately after, this fact would have been narrated by P.W. 3 in his fardbeyan.

32. We do reckon that fardbeyan need not contain all the details. However, when P.W. 3 claims at the Trial that seeing the members of his family approaching



the P.O., the appellants ran away, this was an important fact to be disclosed by P.W. 3.

33. It is an unfortunate case, where no effort was made by the defence to question the investigator whether he had recorded the statements of P.Ws. 1,2,5,6,8 and 9 and whether they had talked about having reached the P.O. immediately after the occurrence.

34. However, none of those witnesses claimed to have seen the actual part of the assault.

35. As we have already noted, P.W. 3 or the deceased not having complained about such demand of protection money; P.W. 3 being spared even when he was a witness to the killing of his brother; and the improvements made in the prosecution version through the mouth of witnesses, who are all family members of the deceased, has rendered the prosecution case absolutely suspect in the eyes of law.

36. There is yet another aspect which casts a cloud over the veracity of the prosecution case. The



inquest was conducted at about 10.15 A.M. on 02.07.2017 at the hospital only. In view of the statement made by P.W. 3 and others that the deceased, after the incident, was taken to JLNMCCH where he was afforded treatment, there ought to have been some record of the admission of the deceased, while still alive, in the emergency ward. The death must have taken place before 10.15 A.M.

37. Though there is no great time gap between the inquest and the time of the post-mortem examination but in the aforementioned background, where the witnesses claimed that the deceased was taken to hospital and afforded treatment, this delay assumes significance. There could be a possibility of the death having taken place earlier in a different transaction and later the accusation was thought of and then levelled against the appellants.

38. What could have been the reason for falsely framing the appellants, we must admit, also eludes us.

39. The time of death assessed by the doctor has been placed between two hours to six hours from the time



of the post-mortem examination. Though the assessment of time of death is somewhat synchronous with the prosecution version but the delay of approximately three hours after the inquest in the post-mortem examination when the inquest was done in the JLNMCH, casts some doubt over the entire prosecution case.

40. We are absolutely unsure whether P.W. 3 had made a correct statement before the police and before the Trial Court.

41. The appellants thus have to be given benefit of doubt.

42. For the aforementioned reasons, we set aside the judgment of conviction and the order of sentence against the appellants and acquit them of the charges, giving them benefit of doubt.

43. The appellants are in custody. They are directed to be released from jail forthwith, if not wanted or detained in any other case.

44. Both the appeals stand allowed.



45. A copy of the judgment be dispatched to the
S.P. of the concerned jail for record as well as compliance.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

krishna/ravi

AFR/NAFR	NAFR
CAV DATE	NA
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